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HON. FREDERICK P. CORBIT

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

In re:  
GIGA WATT, INC.

CASE NO. 18-03197-FPC7

REPLY MEMORANDUM OF  
AUTHORITIES IN RESPONSE TO  
CHAPTER 7 TRUSTEE'S OBJECTION  
TO MOTION TO ENFORCE  
AGREEMENT

Debtor.

Giga Plex, LLC and MLDC1, LLC, ("Creditors" or "Landlords") by and through its counsel of record, submits the following Memorandum of Authorities in Response to the Chapter 7 Trustee's Objection to Motion to Enforce Agreement and Supporting Declaration ("Trustee's Objection").

**I. PRELIMINARY STATEMENT**

As detailed the Trustee's Objection, no further findings were requested under FRBP 7052. The Court granted the Motion to Approve Compromise (ECF No. 724) on October 8, 2020, and this matter was properly brought back to this Court by Landlords for resolution via its Motion to Enforce Settlement Agreement and Notice Thereof (ECF No. 793).

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## II. AUTHORITY

Landlords are not disputing that there is now a Chapter 7 Trustee. On September 29, 2020, the Court entered the Order Converting Case to Chapter 7. Mr. Waldron was appointed Chapter 7 Trustee on September 30, 2020 (ECF No. 745). The Motion to Approve Compromise was entered orally on October 8, 2020. Arguably, the Chapter 7 Trustee has standing to object to the Chapter 11 Trustee's Motion to Approve Compromise prior to entry of the Court's order.

In the Trustee's memorandum, the citation to *In re Radical Bunny, LLC*, 459 B.R. 434, 443 (Bkrcty. D. Ariz., 2011) and *In re Financial Corp. of America*, 114 B.R. 221, 225 (9th Cir. BAP (Cal.) 1990) are both factually distinguishable. Both cases deal with the Trustee's fees which are not at issue. However, that may be the Trustee's concern when discussing the chapter 7 administrative claims in light of the recent adversary proceeding.

The proper framework is not a fee dispute but a motion to enforce the settlement agreement. Here, the District Court cases of *Onewest Bank, FSB v. Farrar*, No. CV 12-00108 ACK-KSC, 2013 U.S. Dist. LEXIS 165173, at \*19 (D. Haw. Oct. 31, 2013) and *Meyer v. Oberto Sausage Co.*, No. 3:17-cv-05076-RJB, 2019 U.S. Dist. LEXIS 36535, at \*5 (W.D. Wash. Mar. 6, 2019) are helpful.

In reviewing an action to enforce a settlement agreement, federal courts are to "appl[y] normal principals of contract law." *Onewest Bank, FSB v. Farrar*, No. CV 12-00108 ACK-KSC, 2013 U.S. Dist. LEXIS 165173, at \*19.

In Washington, "[t]he validity and enforceability of a settlement agreement is determined by reference to the substantive law of contracts." *Meyer v. Oberto Sausage Co.*,

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1 No. 3:17-cv-05076-RJB, 2019 U.S. Dist. LEXIS 36535, at \*6 (W.D. Wash. Mar. 6, 2019)  
2 citing *Veith v. Xterra Wetsuits, L.L.C.*, 144 Wn. App. 362, 366, 183 P.3d 334 (2008) (internal  
3 citation omitted). A contract requires offer, acceptance, and consideration. *Id.*

4 Here, there is no dispute over whether there was consideration. Here, the issue is  
5 whether the settlement agreement approved by this Court is enforceable against the Chapter 7  
6 Trustee.

7  
8 A bankruptcy case that also may be helpful is *In re McCarthy*, 106 B.R. 201, 203  
9 (Bankr. D. Haw. 1989). In that case, a Trustee and a Debtor in Possession filed a motion to  
10 enforce settlement agreement which provided for payments upon the occurrence of certain  
11 events, specifically upon the settlement becoming final and nonappealable. The movants in  
12 that case asserted that the proceeds from the settlement and release agreement were due and  
13 owing because all applicable appeal periods expired. *Id.* at 201-202.

14  
15 Here, this Court granted the Motion to Approve Compromise on October 8, 2020, and  
16 it is believed that the time to challenge this Court's ruling should have passed. The Landlords  
17 respectfully request further instruction as to the enforceability of the settlement agreement and  
18 ask this Court to order the Chapter 7 Trustee to perform based on the settlement agreement  
19 that was properly noticed and approved by this Court.

20  
21 For all these reasons, Landlord's pray for relief from this Court and request that the  
22 Motion to Enforce Agreement be granted, and this Court further direct the Chapter 7 Trustee  
23 to make the disbursement to Landlords pursuant to the Court's Order within seven (7) days  
24 of entry.

25  
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1 DATED: November 30, 2020

2 OVERCAST LAW OFFICES

3  
4 /s/ David A. Kazemba  
5 David A. Kazemba, WSBA #48049  
6 Attorneys for Creditors, Giga Plex, LLC  
7 and MLDC1, LLC  
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